

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTONIO TEJADA, ANDRES EDGARDO
LARROCA FRANCO, ALICIA SANTOS, EVELYN
JACINTO, ARACELI PEREZ, AND ADAN
TEJADA,

MEMORANDUM & ORDER
17-CV-5882 (EK) (RER)

Plaintiffs,

-against-

LA SELECTA BAKERY, INC. AND RAFAEL
REYNOSO,

Defendants.

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ERIC KOMITEE, United States District Judge:

Plaintiffs Antonio Tejada, Andres Edgardo Larroca Franco, Alicia Santos, Evelyn Jacinto, Araceli Perez, and Adan Tejada bring this action against defendants La Selecta Bakery, Inc. and Rafael Reynoso alleging violations of the Fair Labor Standards Act (FLSA) and the New York Labor Law (NYLL). Plaintiffs seek damages for unpaid overtime and minimum wages, unlawful deductions, failure to furnish wage notices and wage statements, liquidated damages, pre-judgment and post-judgment interest, attorneys' fees and costs, and a fifteen percent penalty for all damages not paid within ninety days.

Defendants failed to appear or otherwise defend against this action. At the Plaintiffs' request, the Clerk of the Court entered a Certificate of Default on July 31, 2019.

ECF No. 42. On February 25, 2020, the Plaintiffs moved for default judgment, ECF No. 45, and the Court referred that motion to Magistrate Judge Ramon E. Reyes for a Report and Recommendation (R&R). See Minute Entry dated Feb 27, 2020.

On September 23, 2020, Judge Reyes issued an R&R recommending that the Court grant Plaintiffs' motion for default judgment and award damages under the NYLL. ECF No. 48. Neither party has filed an objection to the R&R and the time to do so has expired. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Accordingly, the Court reviews the R&R for clear error on the face of the record. See Advisory Comm. Notes to Fed. R. Civ. P. 72(b); accord *Gesualdi v. Mack Excavation & Trailer Serv., Inc.*, No. 09-CV-2502, 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010). Having reviewed the record, the Court finds no clear error. Accordingly, the Court adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

Therefore, the Court grants Plaintiffs' motion for default judgment and awards damages as set forth in the R&R:

- \$35,480.92 to Plaintiff Antonio Tejada, plus pre-judgment interest in the amount of \$17,453.70 as of, and including, the date of this Order, plus an additional

\$8.75 for every additional day through the entry of judgment;¹

- \$25,743.08 to Plaintiff Andres Edgardo Larroca Franco, plus pre-judgment interest in the amount of \$14,218.64 as of, and including, the date of this Order, plus an additional \$6.35 for every additional day through the entry of judgment;
- \$41,163.58 to Plaintiff Alicia Santos, plus pre-judgment interest in the amount of \$20,046.10 as of, and including, the date of this Order, plus an additional \$10.15 for every additional day through the entry of judgment;
- \$28,207.42 to Plaintiff Evelyn Jacinto, plus pre-judgment interest in the amount of \$13,840.96 as of, and including, the date of this Order, plus an additional \$6.96 for every additional day through the entry of judgment;
- \$31,939.31 to Plaintiff Araceli Perez, plus pre-judgment interest in the amount of \$19,491.73 as of, and

¹ As set forth in the R&R, prejudgment interest is calculated using the following formula: (total compensatory damages due to plaintiff) x .09/365 x (number of days from midpoint date to the date the Clerk of the Court enters judgment). The R&R identifies the following midpoint dates: June 11, 2015 for Plaintiff Antonio Tejada; October 9, 2014 for Plaintiff Andres Edgardo Larroca Franco; July 1, 2015 for Plaintiff Alicia Santos; June 16, 2015 for Plaintiff Evelyn Jacinto; February 16, 2014 for Plaintiff Araceli Perez; and February 15, 2016 for Plaintiff Adan Tejada.

including, the date of this Order, plus an additional \$7.88 for every additional day through the entry of judgment;

- \$28,725.29 to Plaintiff Adan Tejada; plus pre-judgment interest in the amount of \$12,366.83 as of, and including, the date of this Order, plus an additional \$7.08 for every additional day through the entry of judgment;
- Post-judgment interest for each Plaintiff at the rate set forth in 28 U.S.C. § 1961;
- Attorneys' fees in the amount of \$30,000;
- Costs in the amount of \$1,308.71; and
- A fifteen percent penalty for all damages not paid within ninety days, pursuant to N.Y.L.L. § 198(4).

The Clerk of Court is respectfully directed to enter judgment and close this case.

SO ORDERED.

/s Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: November 25, 2020
Brooklyn, New York